

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification for)	Docket No.
the CPV Sentinel Energy Project)	07-AFC-3
by the Pacific CPV Sentinel, LLC)	
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 3, 2008

9:00 a.m.

Reported by:
Ramona Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Vice Chair and Presiding Member

Jackalyne Pfannenstiel, Chairperson and Associate
Member

Kenneth Celli, Hearing Officer

Kelly Birkinshaw, Advisor to Commissioner Boyd

Tim Tutt, Advisor to Commissioner Pfannenstiel

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel

John Kessler

Maggie Read

PUBLIC ADVISER

Nick Bartsch

APPLICANT

Michael J. Carroll, Attorney
Latham & Watkins

Mark O. Turner
Competitive Power Ventures, Inc.

ALSO PRESENT

John Avery, US Fish & Wildlife Service

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P R O C E E D I N G S

9:04 a.m.

PRESIDING MEMBER BOYD: Good morning.

MS. HOLMES: Good morning.

MR. TURNER: Good morning.

PRESIDING MEMBER BOYD: Welcome to
cloudy, cool, no-longer-warm Sacramento. Fall has
arrived.

This is the Evidentiary Hearing for the
CPV Sentinel Energy Project. I want to welcome
you all to this hearing and I will introduce you
to the Energy Commission's Siting Committee.

I am Commissioner Jim Boyd, I am the
Presiding Member of this siting case.
Commissioner Jackie Pfannenstiel is the Associate
Member of this case. The Hearing Officer,
Mr. Celli here, Ken Celli, will take over from me
in just a few moments. To Chairman Pfannenstiel's
immediate right is her advisor, Tim Tutt. To my
left is my advisor, Kelly Birkinshaw. And I think
that pretty well introduces everybody up here.

I think I will turn it over to Mr. Celli
and we will get introductions from the applicant,
Commission staff and other parties who would like
to be recognized for today's hearing.

1 HEARING OFFICER CELLI: Thank you,
2 Commissioner. Good morning, everyone.

3 MS. HOLMES: Good morning.

4 MR. TURNER: Good morning.

5 HEARING OFFICER CELLI: For the
6 applicant, Mike Carroll. Counsel, would you
7 please introduce who is here for the applicant.

8 MR. CARROLL: Yes. Mike Carroll with
9 Latham & Watkins on behalf of the applicant and to
10 my right is Mark Turner with Competitive Power
11 Ventures. And we also have with us in the
12 audience various members of our technical team.

13 HEARING OFFICER CELLI: Thank you.
14 Commission staff, please.

15 MS. HOLMES: Caryn Holmes, staff
16 counsel. On my left is John Kessler, the project
17 manager.

18 HEARING OFFICER CELLI: Do we have
19 anyone here from any governmental agencies?

20 Is there anyone here from the Public
21 Adviser's Office?

22 Do we have any elected officials that
23 would like to be recognized?

24 Do we have people on the phone, Maggie?

25 MS. READ: Yes. I have a John Avery

1 from US Fish and Wildlife. He is not sure but he
2 may want to speak on Biology.

3 HEARING OFFICER CELLI: Thank you. Very
4 good.

5 Welcome, good morning everyone to the
6 Evidentiary Hearing on the CPV Sentinel Energy
7 Project.

8 The Evidentiary Hearing is a formal,
9 adjudicatory proceeding in which we receive
10 evidence into the formal evidentiary record from
11 the parties. Only the parties, which in this case
12 are the applicant and the California Energy
13 Commission staff since we have no intervenors,
14 only the parties may present evidence for
15 introduction into the formal, evidentiary record,
16 which is the only evidence upon which the
17 Commission may base its decision under law.

18 The technical rules of evidence are
19 generally followed. However, any relevant, non-
20 cumulative evidence may be admitted if it is the
21 sort of evidence upon which responsible persons
22 are accustomed to rely in the conduct of serious
23 affairs.

24 Testimony offered by the parties shall
25 be under oath. Each party has the right to

1 present and cross-examine witnesses, introduce
2 exhibits and to rebut evidence of another party.

3 Questions of relevance will be decided by the
4 Committee. Hearsay evidence may be used to
5 supplement or explain other evidence but shall not
6 be sufficient in itself to support a finding.

7 The Committee will rule on motions and
8 objections. The Committee may take official
9 notice of matters within the Energy Commission's
10 field of competence and of any fact that may be
11 judicially noticed by California courts.

12 The official record of this proceeding
13 includes the sworn testimony of the parties'
14 witnesses, the reporter's transcript of the
15 Evidentiary Hearing, the exhibits received into
16 evidence, briefs, pleadings, orders, notices and
17 comments submitted by members of the public.

18 The Committee's decision will be based
19 solely on the record of competent evidence in
20 order to determine whether the project complies
21 with applicable law.

22 Members of the public who are not
23 parties are welcome and invited to observe the
24 proceedings. There will also be an opportunity
25 for the public to provide comment before we close

1 the hearing today. Depending on the number of
2 persons who wish to speak the Committee may limit
3 the time allowed for each speaker.

4 This public comment period is intended
5 to provide an opportunity for persons who attend
6 the hearing in person or by telephone to address
7 the Committee. It is not an opportunity to
8 present written, recorded or documentary
9 materials. However, such materials may be
10 docketed and submitted to the Energy Commission
11 for inclusion in the administrative record.

12 Members of the public who wish to speak
13 should fill out -- usually we have a blue card.
14 But I think there are so few people here today
15 that we will just call on people towards the end
16 of the proceeding.

17 The Witness List and Exhibit List has
18 been distributed to the parties. Did the
19 applicant and staff, did you receive our Exhibit
20 List this morning when you came in?

21 MR. CARROLL: Yes we did.

22 MS. HOLMES: I beg your pardon?

23 HEARING OFFICER CELLI: We put the
24 Exhibit List out on the table.

25 MS. HOLMES: I'm sorry, I didn't see

1 that.

2 HEARING OFFICER CELLI: Well it is the
3 same one I sent via e-mail on Friday so you
4 should, you should have that, staff. Did you
5 receive the one on Friday that I sent?

6 MS. HOLMES: I did.

7 HEARING OFFICER CELLI: And you have it
8 with you today?

9 MS. HOLMES: That's what I'm looking
10 for.

11 HEARING OFFICER CELLI: We will use
12 these --

13 MS. HOLMES: I have multiple Exhibit
14 Lists, I apologize. Thank you.

15 HEARING OFFICER CELLI: And I see
16 Mr. Kessler carrying one. So staff, do you have
17 one now?

18 MS. HOLMES: I do.

19 HEARING OFFICER CELLI: Thank you. We
20 will use these lists to organize the receipt of
21 evidence into the record. There are several
22 uncontested topics. And possibly all of the
23 topics are uncontested today that are identified
24 in the Topic and Witness List. None of the
25 parties yet has filed an objection to submittal of

1 these topics by declaration.

2 The way we will proceed today is we will
3 allow the applicant to offer into evidence the
4 relevant sections of the AFC, the Application for
5 Certification, relevant supplements, and testimony
6 in support of the uncontested topics. Then we
7 will ask staff to offer those sections of the FSA
8 and supplemental testimony which constitutes
9 staff's testimony in support of the uncontested
10 topics. In addition parties may offer into
11 evidence any other listed exhibits relevant to the
12 uncontested topics.

13 At this time we are going to ask the
14 court reporter to please swear in the project
15 managers and any environmental consultants that
16 the parties have in this case. At least the PMs.
17 So applicant, Mr. Turner, and for staff,
18 Mr. Kessler.

19 Whereupon,

20 JOHN KESSLER and MARK TURNER
21 Were duly sworn.

22 HEARING OFFICER CELLI: Now at this time
23 my understanding is, and I am going to ask the
24 parties, that we have no contested topics. Is
25 that correct, Mr. Carroll?

1 MR. CARROLL: I believe that is correct.
2 At the direction of the Committee the applicant
3 met with staff following the Prehearing
4 Conference. There were a number of exchanges that
5 occurred between applicant and staff subsequent to
6 the Prehearing Conference, culminating in an
7 Addendum to the FSA that was filed by the staff on
8 October 27.

9 In response to that Addendum the
10 applicant had a filing on October 29 in which we
11 had proposed some additional changes to Proposed
12 Condition Soil and Water-8. I believe if we have
13 concurrence with staff on the applicant's proposed
14 changes to Soil and Water-8 that that closes out
15 all of the contested issues that we had been
16 discussing and there would not be any adjudicated
17 issues.

18 HEARING OFFICER CELLI: Staff?

19 MS. HOLMES: Yes. As we stated in our
20 filing of October 30, staff concurs with the
21 changes proposed by the applicant with respect to
22 Soil and Water-8.

23 HEARING OFFICER CELLI: Thank you. And
24 those would be Exhibits 130 to 132 that we added
25 to the Exhibit List last week.

1 MS. HOLMES: I believe that the actual
2 changes to the Conditions of Certification are
3 contained in the letter that Mr. Carroll sent.

4 MR. CARROLL: That's correct.

5 MS. HOLMES: I don't believe they have
6 an exhibit number.

7 HEARING OFFICER CELLI: That's 130, is
8 it not?

9 MR. CARROLL: The proposed changes were
10 in my filing, which I guess we did not mark as an
11 exhibit. It had attached to it Exhibits -- or
12 referenced Exhibits 130, 131 and 132. But I guess
13 my document itself has not been marked as an
14 exhibit.

15 HEARING OFFICER CELLI: Okay. What I
16 would like to do this morning is go through what
17 were the previously uncontested topics first and
18 get those exhibits in. And we will go topic by
19 topic. And then we will address the previously
20 two, Bio and Water topics. And then we can see
21 what we need in order to make sure that the record
22 is complete at that time, okay. So with that.

23 For the Executive Summary and Project
24 Description. Applicant, I see that my notes show
25 that we have Exhibits 1, 2, 25, 125 and 132.

1 MR. CARROLL: I'm sorry, that list was?

2 That list of exhibits was what?

3 HEARING OFFICER CELLI: The Executive
4 Summary and Project Description. The exhibits
5 that I show as being submitted under that topic
6 are 1, 2, 25, 125 and 132. And I may have added
7 132 after it came in last week.

8 MR. CARROLL: Yes, I believe that's
9 correct. I think 132 could go in any number of
10 places but I think it is fine to put it where you
11 have. So yes, that would be the correct list.

12 HEARING OFFICER CELLI: So is there a
13 motion by applicant?

14 MR. CARROLL: Yes, applicant would move
15 those exhibits into evidence.

16 HEARING OFFICER CELLI: Staff?

17 MS. HOLMES: No objection.

18 HEARING OFFICER CELLI: One, 2, 25, 132
19 and 125 will be received.

20 (The above-referenced documents,
21 previously marked as Applicant's
22 Exhibits 1, 2, 25, 125, and 132
23 were received into evidence.)

24 HEARING OFFICER CELLI: Cultural
25 Resources.

1 MR. CARROLL: In the area of Cultural
2 Resources applicant would move Exhibits 9, 41, 71,
3 76, 104 and 105.

4 HEARING OFFICER CELLI: Staff, any
5 objection?

6 MS. HOLMES: No.

7 HEARING OFFICER CELLI: Nine, 41, 71,
8 76, 104 and 105 will be received into evidence.

9 (The above-referenced documents,
10 previously marked as Applicant's
11 Exhibits 9, 41, 71, 76, 104 and 105
12 were received into evidence.)

13 HEARING OFFICER CELLI: Hazardous
14 Materials Management.

15 MR. CARROLL: In the area of Hazardous
16 Materials Management the applicant seeks to move
17 Exhibits 18, 54 and 106 into evidence.

18 HEARING OFFICER CELLI: Staff?

19 MS. HOLMES: No objection.

20 HEARING OFFICER CELLI: Eighteen, 54 and
21 106 will be received.

22 (The above-referenced documents,
23 previously marked as Applicant's
24 Exhibits 18, 54 and 106 were
25 received into evidence.)

1 HEARING OFFICER CELLI: Traffic and
2 Transportation.

3 MR. CARROLL: Applicant's exhibits are
4 16, 48, 49, 50, 51, 52, 53 and 117.

5 HEARING OFFICER CELLI: Staff?

6 MS. HOLMES: No objection.

7 HEARING OFFICER CELLI: The Committee
8 will receive 16, 48, 49, 50, 51, 52, 53 and 117
9 into the record.

10 (The above-referenced documents,
11 previously marked as Applicant's
12 Exhibits 16, 48, 49, 50, 51, 52, 53
13 and 117 were received into
14 evidence.)

15 HEARING OFFICER CELLI: Transmission
16 Line Safety and Nuisance.

17 MR. CARROLL: Applicant's exhibits are
18 number 4, 32, 96, 118 and 130.

19 HEARING OFFICER CELLI: Any objections,
20 staff?

21 MS. HOLMES: No.

22 HEARING OFFICER CELLI: Four, 32, 96,
23 118 and 130 are received.

24 (The above-referenced documents,
25 previously marked as Applicant's

1 Exhibits 4, 32, 96, 118 and 130
2 were received into evidence.)

3 HEARING OFFICER CELLI: Next is Waste
4 Management.

5 HEARING OFFICER CELLI: Applicant's
6 exhibits in Waste Management are 19, 74 and 120.

7 HEARING OFFICER CELLI: Staff?

8 MS. HOLMES: No objection.

9 HEARING OFFICER CELLI: Nineteen, 74 and
10 120 are received.

11 (The above-referenced documents,
12 previously marked as Applicant's
13 Exhibits 19, 74 and 120 were
14 received into evidence.)

15 HEARING OFFICER CELLI: Facility Design.

16 MR. CARROLL: Applicant's exhibits on
17 the topic of Facility Design are 26, 27, 28, 29,
18 30, 69 and 101.

19 HEARING OFFICER CELLI: Staff, any
20 objection?

21 MS. HOLMES: No.

22 HEARING OFFICER CELLI: Twenty-six, 27,
23 28, 29, 30, 69 and 101 will be received into
24 evidence.

25 (The above-referenced documents,

1 previously marked as Applicant's
2 Exhibits 26, 27, 28, 29, 30, 69 and
3 101 were received into evidence.)

4 HEARING OFFICER CELLI: Geology and
5 Paleontology.

6 MR. CARROLL: Applicant's exhibits are
7 21, 22, 58, 59, 84, 122, 123 and 124.

8 HEARING OFFICER CELLI: Any objection
9 from staff?

10 MS. HOLMES: No.

11 HEARING OFFICER CELLI: Twenty-one, 22,
12 58, 59, 84, 122, 123 and 124 are received into
13 evidence.

14 (The above-referenced documents,
15 previously marked as Applicant's
16 Exhibits 21, 22, 58, 59, 84, 122,
17 123 and 124 were received into
18 evidence.)

19 HEARING OFFICER CELLI: I show no
20 evidence under Power Plant Efficiency for
21 applicant, no exhibits. Is that correct?

22 MR. CARROLL: That is correct. I
23 believe Efficiency was covered in the Project
24 Description exhibits previously admitted.

25 HEARING OFFICER CELLI: Next I have

1 General Conditions, Compliance Monitoring and
2 Facility Closure. I had no exhibits from
3 applicant under that heading but I inserted a
4 little in red for myself Exhibit 3, which was the
5 declaration having to do with facility closure.

6 MR. CARROLL: Yes, that is Section 3 of
7 the AFC. I believe that could properly go under
8 that topic area.

9 HEARING OFFICER CELLI: Okay. So moved?

10 MR. CARROLL: We have what we refer to
11 as Various that picks up a number of exhibits
12 either across topic areas or to unique topic areas
13 so we had identified Exhibit 3 under Various. But
14 I believe you are correct, it could go under the
15 Facility Closure topic.

16 HEARING OFFICER CELLI: Let's stay
17 organized here. So Three is moved into evidence.
18 Staff, any objection?

19 MS. HOLMES: No.

20 HEARING OFFICER CELLI: Three will be
21 received.

22 (The above-referenced document,
23 previously marked as Applicant's
24 Exhibit 3 was received into
25 evidence.)

1 HEARING OFFICER CELLI: Public Health.

2 MR. CARROLL: For Public Health
3 applicant would move Exhibits 12, 47, 60 and 109.

4 HEARING OFFICER CELLI: Staff, any
5 objection?

6 MS. HOLMES: No.

7 HEARING OFFICER CELLI: Under Public
8 Health applicant's Exhibits 12, 47, 60 and 109 are
9 received into evidence.

10 (The above-referenced documents,
11 previously marked as Applicant's
12 Exhibits 12, 47, 60 and 109 were
13 received into evidence.)

14 HEARING OFFICER CELLI: Socioeconomics.

15 MR. CARROLL: Applicant would move
16 Exhibits 14 and 110.

17 HEARING OFFICER CELLI: Staff, any
18 objection?

19 MS. HOLMES: No objection.

20 HEARING OFFICER CELLI: Fourteen and 110
21 will be received into evidence.

22 (The above-referenced documents,
23 previously marked as Applicant's
24 Exhibits 14 and 110 were received
25 into evidence.)

1 HEARING OFFICER CELLI: Noise and
2 Vibration.

3 MR. CARROLL: Applicant moves Exhibits
4 11, 43, 44, 45, 46, 89 and 108.

5 HEARING OFFICER CELLI: Staff?

6 MS. HOLMES: No objection.

7 HEARING OFFICER CELLI: Eleven, 43, 44,
8 45, 46, 89 and 108 will be received into evidence.

9 (The above-referenced documents,
10 previously marked as Applicant's
11 Exhibits 11, 43, 44, 45, 46, 89 and
12 108 were received into evidence.)

13 HEARING OFFICER CELLI: Transmission
14 System Engineering.

15 MR. CARROLL: Applicant lumped its
16 Transmission Line Safety and Nuisance and its
17 Transmission System Engineering exhibits together.

18 HEARING OFFICER CELLI: Right. I have
19 4, 32, 96, 118 and 130 as already received into
20 evidence.

21 MR. CARROLL: Yes. We have no
22 additional transmission-related exhibits.

23 HEARING OFFICER CELLI: Thank you. That
24 would be -- And I have nothing under Power Plant
25 Reliability. I take it that would be under your

1 Various.

2 MR. CARROLL: That's correct.

3 HEARING OFFICER CELLI: Visual
4 Resources.

5 MR. CARROLL: Under Visual Resources
6 applicant has Exhibits 17 and 119.

7 HEARING OFFICER CELLI: Staff, any
8 objection to 17 and 119?

9 MS. HOLMES: No.

10 HEARING OFFICER CELLI: Seventeen and
11 119 will be received into evidence.

12 (The above-referenced documents,
13 previously marked as Applicant's
14 Exhibits 17 and 119 were received
15 into evidence.)

16 HEARING OFFICER CELLI: Worker Safety
17 and Fire Protection.

18 MR. CARROLL: Applicant moves Exhibits
19 13 and 121.

20 HEARING OFFICER CELLI: Any objection
21 from staff?

22 MS. HOLMES: No.

23 HEARING OFFICER CELLI: Thirteen and 121
24 are received into evidence.

25 (The above-referenced documents,

1 previously marked as Applicant's
2 Exhibits 13 and 121 were received
3 into evidence.)

4 HEARING OFFICER CELLI: Land Use.

5 MR. CARROLL: Applicant moves Exhibits
6 10, 65 and 107.

7 HEARING OFFICER CELLI: Any objection
8 from staff?

9 MS. HOLMES: No.

10 HEARING OFFICER CELLI: Ten, 65 and 107
11 will be received into evidence.

12 (The above-referenced documents,
13 previously marked as Applicant's
14 Exhibits 10, 65 and 107 were
15 received into evidence.)

16 HEARING OFFICER CELLI: And
17 Alternatives. Go ahead, Alternatives.

18 MR. CARROLL: Applicant moves Exhibits
19 23 and 126.

20 HEARING OFFICER CELLI: Any objection
21 from staff?

22 MS. HOLMES: No.

23 HEARING OFFICER CELLI: Under
24 Alternatives I recall that when we were at the
25 Prehearing Conference that you, applicant, had

1 raised the question of the Alternatives. I don't
2 recall hearing any resolution of that or seeing
3 anything in any of the documents or declarations.
4 I wanted to know what happened to that. I think
5 it had to do with water.

6 MR. CARROLL: Correct. I think really
7 it is not a fundamental disagreement with the
8 staff because both the applicant and staff believe
9 that the proposed water supply plan for the
10 project is superior to the alternatives that were
11 analyzed in the FSA.

12 Underlying that agreement is somewhat of
13 a disagreement over the environmental and economic
14 merits of the alternatives. Whereas the staff in
15 its FSA concluded that the alternatives were not
16 economically infeasible or environmentally
17 unsound. Applicant believes that the alternatives
18 in fact are environmentally unsound and
19 economically infeasible.

20 So as I said, with respect to the
21 ultimate conclusion, we are in complete agreement
22 that the proposed water supply plan is superior.
23 We think that it is even more superior than staff
24 has concluded based on our underlying analysis of
25 the water supply alternatives.

1 HEARING OFFICER CELLI: Staff, do you
2 have nothing to add?

3 MS. HOLMES: Nothing to add.

4 HEARING OFFICER CELLI: Now, the
5 formerly disputed topics of Soil and Water and
6 Bio. I have quite a long list of Soil and Water
7 Resources exhibits. I don't know if all of those
8 exhibits are still necessary if the parties have
9 come to an agreement but, applicant, would you
10 move your evidence in and then we will see what we
11 need.

12 MR. CARROLL: Yes. In Soil and Water
13 Resources applicant moves Exhibits 6, 15, 20, 31,
14 55, 56, 57, 66, 67, 68, 70, 72, 73, 77, 78, 79,
15 80, 81, 83, 85, 86, 90, 91, 93, 94, 95, 111, 112,
16 113, 114, 115, 116, 128 and 129.

17 HEARING OFFICER CELLI: Any objections,
18 staff?

19 MS. HOLMES: No.

20 HEARING OFFICER CELLI: Before I rule on
21 that I have some questions. I have that 73 was
22 intentionally omitted and I don't have any
23 document that is identified by applicant as
24 Exhibit 73.

25 MR. CARROLL: That's correct, I

1 apologize, 73 was omitted.

2 HEARING OFFICER CELLI: The same is true
3 for I believe 113. Exhibit 113 I have as
4 intentionally omitted and I don't have any
5 document that corresponds to applicant's 113 for
6 identification.

7 MR. CARROLL: That is also correct, 113
8 was omitted.

9 HEARING OFFICER CELLI: And it remains
10 so today?

11 MR. CARROLL: Yes.

12 HEARING OFFICER CELLI: Okay. And
13 lastly I have 116, applicant's for identification
14 116, as withdrawn by applicant on October 21 at
15 the Prehearing Conference.

16 MS. HOLMES: I'm sorry, which exhibit
17 was this?

18 HEARING OFFICER CELLI: One-one-six.

19 MR. CARROLL: That is also correct.

20 HEARING OFFICER CELLI: Okay. Then I
21 will read slowly. Applicant's 6, 15, 20, 31, 55,
22 56, 57, 66, 67, 68, 70, 72, 77, 78, 79, 80, 81,
23 83, 85, 86, 90, 91, 93, 94, 95, 111, 112, 114,
24 115, 128 and 129 will be received into evidence.
25 Did I get everything in that list?

1 MR. CARROLL: Yes.

2 (The above-referenced documents,
3 previously marked as Applicant's
4 Exhibits 6, 15, 20, 31, 55, 56, 57,
5 66, 67, 68, 70, 72, 77, 78, 79, 80,
6 81, 83, 85, 86, 90, 91, 93, 94, 95,
7 111, 112, 114, 115, 128 and 129
8 were received into evidence.)

9 HEARING OFFICER CELLI: Now we have had
10 some back and forth with regard to Water
11 Resources. I think that, applicant, you are going
12 to have to move the letter with the proposed
13 language. I think that was Soil and Water-8. It
14 should be moved in -- My next in order would be
15 133.

16 MR. CARROLL: Yes. So exhibits -- I'm
17 sorry, Applicant's Exhibit 133 would be
18 applicant's additional testimony in response to
19 the Addendum to the Final Staff Assessment filed
20 by Energy Commission staff, submitted by applicant
21 on October 29, 2008. Which includes applicant's
22 proposed language for Soil and Water-8.

23 HEARING OFFICER CELLI: Now I am
24 concerned that since we have received everything
25 under Soil and Water, you want to make sure that I

1 have the most accurate, current view of whatever
2 the conditions or changes are in Soil and Water.
3 And so I was wondering, I had written down a note
4 to myself to see if the parties would be willing
5 to provide a joint version of the COCs for Soil
6 and Water Resources but I don't know if that is
7 necessary at this point. We had other issues
8 besides Soil and Water-8, as I recall.

9 MR. CARROLL: Right. Applicant would be
10 happy to do that but I think that the current,
11 final set of conditions would be what is reflected
12 in the Addendum to the FSA, with the exception of
13 Soil and Water-8, which is identified in what we
14 just marked as Applicant's Exhibit 133.

15 HEARING OFFICER CELLI: So I have 133
16 and then the Addendum, which is -- Which exhibit
17 is that?

18 MR. CARROLL: That is staff's exhibit.

19 HEARING OFFICER CELLI: Oh, it's staff's
20 supplemental testimony.

21 MS. HOLMES: It's Exhibit 206 from
22 staff, which we haven't entered yet.

23 HEARING OFFICER CELLI: Okay. So what I
24 will do then, I will take staff's exhibits and
25 then I will try to get organized and see how the

1 two of them work out. Make sure we have got all
2 the bases covered.

3 MS. HOLMES: I would like to make a
4 suggestion, Hearing Officer Celli. And that's
5 that the exhibit that you just identified, 133, be
6 specifically identified as the cover memo for the
7 additional testimony in exhibits. It is not the
8 additional testimony itself. They have their own
9 exhibit numbers, it is just the cover memo. Just
10 so that there is no confusion. I think that would
11 be a good idea.

12 HEARING OFFICER CELLI: Applicant?

13 MR. CARROLL: That is correct.

14 HEARING OFFICER CELLI: Okay, Exhibit
15 133 is the cover memo for applicant's additional
16 testimony of October 29, 2008.

17 MS. HOLMES: Thank you.

18 MR. CARROLL: Correct.

19 HEARING OFFICER CELLI: Biological
20 Resources.

21 MR. CARROLL: May I ask, did we move 133
22 into evidence?

23 HEARING OFFICER CELLI: One-thirty-three
24 is received into evidence if no objection from
25 staff.

1 MS. HOLMES: No objection.

2 (The above-referenced document,
3 previously marked as Applicant's
4 Exhibit 133 was received into
5 evidence.)

6 HEARING OFFICER CELLI: Thank you.

7 MS. HOLMES: Belated or otherwise.

8 HEARING OFFICER CELLI: Biological
9 Resources.

10 MR. CARROLL: Yes. Applicant's exhibits
11 in Biological Resources are 8, 40, 61 and 103.

12 HEARING OFFICER CELLI: Objections from
13 staff?

14 MS. HOLMES: No objection.

15 HEARING OFFICER CELLI: Exhibits 8, 40,
16 61 and 103 are received into evidence.

17 (The above-referenced documents,
18 previously marked as Applicant's
19 Exhibits 8, 40, 61 and 103 were
20 received into evidence.)

21 HEARING OFFICER CELLI: Then, applicant,
22 you have the Various.

23 MR. CARROLL: Yes. These consist in
24 large part of responses to data requests that
25 covered a whole series of topics. So within this

1 area we have Exhibits 5, 24, 42, 64, 82, 88, 127
2 and 131. I'm sorry, did I include 3 on that list?

3 HEARING OFFICER CELLI: Three was
4 received earlier.

5 MR. CARROLL: Right. I did not mean to
6 include 3 in that list if I did. So 5, 24, 42,
7 64, 82, 88, 127 and 131.

8 HEARING OFFICER CELLI: And I have 132.

9 MR. CARROLL: We included 132 --

10 HEARING OFFICER CELLI: Oh, it was
11 received in the Executive --

12 MS. HOLMES: We didn't but should have.

13 HEARING OFFICER CELLI: Okay. Any
14 objection from staff?

15 MS. HOLMES: No objection.

16 HEARING OFFICER CELLI: Okay,
17 Applicant's Exhibits 5, 24, 42, 64, 82, 88, 127
18 and 131 are received into evidence.

19 (The above-referenced documents,
20 previously marked as Applicant's
21 Exhibits 5, 24, 42, 64, 82, 88, 127
22 and 131 were received into
23 evidence.)

24 HEARING OFFICER CELLI: At this time --

25 MR. CARROLL: I'm sorry, point of

1 clarification. One hundred thirty-two I had
2 marked as having been moved into evidence.

3 HEARING OFFICER CELLI: You're right.
4 One hundred thirty-two I put under Executive
5 Summary and Project Description.

6 MR. CARROLL: Okay, that was it.

7 HEARING OFFICER CELLI: So that has been
8 received into evidence.

9 So are there any other topics now? We
10 earlier talked about the fact that because we are
11 bifurcating this hearing and the Air Quality issue
12 is going to be put off until some later date when
13 the ERCs are identified, that we would not receive
14 the AQ exhibits in at this time and we will put
15 that off until a later day.

16 So with that, staff.

17 MS. HOLMES: We didn't separate out our
18 exhibits. We have the FSA as a single exhibit, as
19 Exhibit 200. And it contains a number of, all of
20 the technical areas. I don't know what you want
21 to do with that with respect to the Air Quality
22 issue.

23 HEARING OFFICER CELLI: Well, my
24 intention was to receive the FSA, that's Exhibit
25 200. I don't know that it makes much difference

1 really to admit or not admit Air Quality exhibits
2 at this time. There may be some changes between
3 now and whenever we are able to hear the rest of
4 it. Applicant, did you have a position on that?

5 MR. CARROLL: There was one issue that
6 was left outstanding that we worked to resolve but
7 then ultimately concluded that we didn't have to
8 get it resolved prior to today since Air Quality
9 was going to remain open. So there is one
10 conclusion contained in the Air Quality section of
11 the FSA that applicant disagrees with. I don't
12 know that we couldn't deal with that issue even if
13 the exhibits came in but there is one outstanding
14 issue.

15 HEARING OFFICER CELLI: What I think
16 would make most sense would be to -- I don't know
17 if the Committee has any question on this or
18 position on how we admit the Air Quality but my
19 feeling is the FSA is a single package. We just
20 accept the FSA as Exhibit 200 without toying with
21 the topics.

22 MS. HOLMES: And staff does plan to
23 respond to the issue that was raised in the
24 previous filing by the applicant regarding the
25 attainment status of the area in which the project

1 is located. We can do that when we file
2 additional testimony on the offset package once it
3 is received.

4 HEARING OFFICER CELLI: Okay. So with
5 that let's just proceed with the FSA as a whole,
6 please.

7 MS. HOLMES: I would move Exhibit 200.

8 HEARING OFFICER CELLI: Any objection,
9 applicant?

10 MR. CARROLL: No.

11 HEARING OFFICER CELLI: And I have
12 Exhibits 201 through 213 as well. Any motion from
13 the staff on the remaining exhibits?

14 MS. HOLMES: I would move staff's
15 remaining exhibits.

16 HEARING OFFICER CELLI: Okay. Just to
17 make the record complete, Exhibit 201 deals with
18 the Executive Summary; 202 is Project Description;
19 203, Biological Resources; 204, Hazardous
20 Materials; 205, Land Use; 206, Soil and Water;
21 207, Visual Resources; 208 is Waste Management;
22 209 is Transmission System Engineering; 210,
23 Staff's supplemental testimony regarding
24 Transmission Line Safety and Nuisance; 211 is
25 Traffic and Transportation; Exhibit 212 is Worker

1 Safety and Fire Protection; and 213 is Soil and
2 Water. Any objection by the applicant?

3 MR. CARROLL: No.

4 HEARING OFFICER CELLI: Staff's 200
5 through 213 will be received into evidence.

6 (The above-referenced documents,
7 previously marked as Staff's
8 Exhibits 200 through 213 were
9 received into evidence.)

10 HEARING OFFICER CELLI: Any further
11 evidence from staff?

12 MS. HOLMES: Well, I would point out
13 that we don't have anything, we haven't provided
14 any testimony in writing other than the cover memo
15 of October 30 indicating our concurrence with the
16 applicant's proposed changes to Soil and Water-8.
17 So I don't know if you want to take oral testimony
18 on that or if you want to mark the cover memo as
19 you did for the applicant as an exhibit.

20 HEARING OFFICER CELLI: Well 133 has
21 been received into evidence. And I think at this
22 time if you would call your witness and basically
23 have him testify as needed.

24 MS. HOLMES: Staff's witness has already
25 been sworn.

1 DIRECT EXAMINATION

2 BY MS. HOLMES:

3 Q Mr. Kessler, have you reviewed Exhibit
4 133, which is the cover memo to the applicant's
5 additional testimony in response to Addendum to
6 Staff Final Assessment filed by Energy Commission
7 staff?

8 A Yes I have.

9 Q Does that document contain proposed
10 revisions to Soil and Water-8?

11 A Yes.

12 Q Does staff concur with those proposed
13 changes?

14 A Yes we do.

15 MS. HOLMES: Thank you.

16 HEARING OFFICER CELLI: Applicant?

17 MR. CARROLL: No questions.

18 HEARING OFFICER CELLI: Thank you.

19 Okay, at this time I wanted to, first
20 with the applicant. Is there any other evidence
21 that you wish to put in the record?

22 MR. CARROLL: No, thank you.

23 HEARING OFFICER CELLI: Staff?

24 MS. HOLMES: No.

25 HEARING OFFICER CELLI: Thank you. So

1 now we have received all of the evidence and we
2 have no further witnesses to call at this time.

3 MS. HOLMES: I believe that there is a
4 representative from the United States Fish and
5 Wildlife Service who may or may not wish to talk
6 about the issue associated with Soil and Water-8
7 and Biological Resources.

8 HEARING OFFICER CELLI: Well that is a
9 perfect segue into public comment.

10 Mr. John Avery, can you hear us?
11 Mr. Avery would be appearing by telephone.

12 MS. READ: They are opening up his line
13 right now.

14 HEARING OFFICER CELLI: Thank you.

15 While we are waiting, Mr. Bartsch, do
16 you have any blue cards for us?

17 MR. BARTSCH: No, Hearing Officer, there
18 aren't any right now.

19 HEARING OFFICER CELLI: If there are any
20 members of the public who are here who would like
21 to address the Committee please see Mr. Bartsch
22 who just stood up and he will have you fill out a
23 blue card. We will call you in whatever order we
24 receive them. Is Mr. Avery available?

25 MR. AVERY: I am here, can you hear me?

1 HEARING OFFICER CELLI: Yes, we can.

2 Mr. Avery, thank you. This is your moment to
3 speak so please.

4 MR. AVERY: From what I have seen
5 through the e-mails that Caryn sent me, and Caryn,
6 you could actually give me the date if I need to.
7 I concur with what I have seen so I don't have any
8 comments at this point.

9 HEARING OFFICER CELLI: Thank you, thank
10 you very much for calling in.

11 Do we have anyone else on the telephone?

12 MS. READ: No.

13 HEARING OFFICER CELLI: Okay. Some of
14 the public comments that we received, and I have a
15 list. We have received numerous written public
16 comments. And I have a list that we drew up on
17 Friday. Coachella Valley Economic Partnership, a
18 letter of support. Mission Springs Water
19 District's comments of 8/19. Riverside County
20 Fire Department's comments. Mission Springs Water
21 District Board of Directors on 8/26. The City of
22 Desert Hot Springs on 8/26 commented regarding
23 water for Sentinel.

24 On 8/27, Riverside County, the flood
25 hazard report. Also on 8/27, Riverside County, a

1 letter from P.F. Clark, comments on PSA
2 Transportation and Land Management. On 9/2 we
3 received Desert Water Agency's comments. And on
4 9/3 the City of Palm Springs sent a letter of
5 support. On 9/15 we received, I don't know if it
6 is P-S-O-M-A-S as an acronym or Psomas, sent a
7 letter, an engineering firm, regarding the DWA
8 agreement, comments on the PSA.

9 On 9/23 the CPUC sent in comments. And
10 on 9/23/08, Desert Water sent a Delivery and
11 Exchange Agreement between Desert Water and
12 Metropolitan Water District. And then on 10/7/08
13 we have the Mission Creek Groundwater Sub-basin,
14 Krieger and Stewart's submittal.

15 My question would be to staff whether
16 all of those comments are included in the FSA? Or
17 at least addressed, shall we say.

18 MR. KESSLER: Hearing Officer Celli,
19 this is John Kessler. And I believe that I did a
20 similar review as yourself late this past week and
21 I believe all those comments are addressed in the
22 FSA. They are addressed in varying ways if you
23 would like me to just to take a moment to express
24 those distinctions.

25 With respect to all the agencies'

1 comments. Mission Springs Water District's, for
2 example, or the CPUC. I believe that staff has
3 identified those as separate comments and
4 responded to those, referred to in the FSA. Those
5 comments are addressed either within the text or
6 the conditions.

7 It is really just the County of
8 Riverside that I believe has some distinction from
9 the discrete listing of those others. And it is
10 really the County provided us 25 pages of general
11 conditions. Some of those are pretty boiler
12 plate. Some don't apply for this project, many of
13 them do. And I believe that inherent within our
14 conditions, in some cases we either spell those
15 out specifically and have included provisions
16 within our conditions that speak to their specific
17 ordinances.

18 Or in other cases, such as the grading
19 plan, we have provisions within, for example,
20 Facility Design, that requires the applicant to
21 prepare a grading plan that is reviewed and
22 approved by the CBO. The CBO really serves as a
23 representative of that local agency. so
24 inherently I believe that those local ordinances
25 would be included, considered and required within

1 the submittal and approval of those plans.

2 So with that explanation I believe, in
3 my opinion, staff has done a comprehensive job of
4 including all the public comments and agency
5 comments and addressing those and making those a
6 part of our FSA.

7 HEARING OFFICER CELLI: Thank you for
8 that clarification. Applicant, do you wish to add
9 anything to that about comments, public comment?

10 MR. CARROLL: Applicant would concur
11 that to the extent that the comment letters
12 referenced called for some sort of a response, as
13 opposed to simply taking a position on the
14 project, we believe that all of them have been
15 addressed, primarily by the staff, to some extent
16 by the applicant. And couple of the comment
17 letters that were referenced are incorporated into
18 applicant's pre-filed testimony as well.

19 HEARING OFFICER CELLI: Thank you. The
20 last item I have is a letter, really comments from
21 Southern California Edison. A letter docketed
22 October 14, 2008 from Milissa Marona from Southern
23 California Edison. Is there anyone here from
24 Southern California Edison today?

25 Seeing no one. This October 14 letter

1 from Milissa Marona lists a number of concerns
2 regarding the FSA. Some of them seem to me to be
3 quite serious and need to be dealt with. The good
4 news, I think, is that we have, by necessity,
5 bifurcated this Evidentiary Hearing so the record
6 will remain open. And I was going to ask the
7 parties if they, first of all, had a chance to
8 review, applicant, the comments from Southern
9 California Edison of October 14?

10 MR. CARROLL: No.

11 HEARING OFFICER CELLI: You have not
12 received this?

13 MR. CARROLL: No.

14 HEARING OFFICER CELLI: And staff, you
15 have received it?

16 MS. HOLMES: Yes, but we have not had an
17 opportunity to look at them in detail.

18 HEARING OFFICER CELLI: What we have
19 here, just to give you some idea of the kinds of
20 things we are concerned about. Throughout the FSA
21 linears are described as linears in general. And
22 apparently late into the game applicant and
23 Southern California Edison came up with an
24 agreement whereby Southern California Edison would
25 take over entirely the ownership and construction

1 of the T-lines. So as a result they have some
2 confusion about what they need to do in order to
3 be in compliance.

4 Largely a lot of these things I think
5 can be taken care of between the applicant and
6 Southern California Edison outside of the record.
7 But they do have concerns about things like the
8 special status species and other surveys, whether
9 that involves their, the construction that they
10 need to do.

11 The big one has to do with the fact that
12 they are taking issue with some -- the bird perch
13 diverters that go on TSE lines that our
14 conditions, I should say the conditions
15 recommended by staff would require. They think
16 that that would be duplicative. There are other
17 lines out there that don't have that.

18 I think these issues need to be dealt
19 with by the parties. My recommendation would be,
20 and I'll put this out for discussion, is that the
21 parties actually brief and discuss these issues.
22 One of the things they are suggesting is that a
23 condition that we have in Bio that calls for
24 elimination of ravens is actually illegal. And so
25 there are legal issues and there are technical

1 issues that need to be addressed in Bio, Hazardous
2 Materials, Air Quality.

3 So what I would like to hear from the
4 parties is at what time do you think you could
5 respond in writing to these comments from Southern
6 California Edison? Applicant.

7 MR. CARROLL: Well It is somewhat
8 difficult to say, although I appreciate your
9 summary, without having seen the comments. I
10 don't know to what extent any of them are going to
11 require any in-depth analysis. I would say that I
12 suspect that some of them have already been
13 addressed because we did, applicant did submit
14 proposed modifications to the transmission
15 conditions of certification to reflect the fact
16 that Southern California Edison was going to be
17 handling the transmission line entirely.

18 And so that was a change that occurred
19 between submittal of the original application and
20 this point in time. So a number of the conditions
21 were modified to reflect the fact that Edison
22 would be designing, constructing, owning,
23 operating the transmission line. So some of their
24 issues I suspect have been addressed to the extent
25 that they relate to who controls the transmission

1 line.

2 Some of them I don't believe have
3 necessarily been addressed, including some that
4 you just referenced. I would say that we could
5 provide some sort of a response within a week of
6 today's hearing. In some cases that response may
7 be, we will follow up with some additional
8 analysis in some additional period of time to the
9 extent that they require analysis. But we can at
10 least respond to all the questions within a week.

11 HEARING OFFICER CELLI: I am looking at
12 the calendar now, staff. Thank you, Applicant.

13 I am looking at Friday the 14th of
14 November as a date by which the parties would
15 submit responses to the public comment of Southern
16 California Edison.

17 MS. HOLMES: The issue, the scheduling
18 issue that we have is that I don't know that we
19 can get staff to look at it in the next four or
20 five days and then I will not be in the office. I
21 would recommend that we fall back to the date that
22 we had originally proposed for our opening briefs
23 of December 4. That would give staff ample time
24 to examine it as well as give me time to research
25 any legal issues that need to be addressed.

1 HEARING OFFICER CELLI: Thank you. So
2 if that is acceptable to applicant we would ask
3 that on December 4 -- And in the meantime, staff,
4 if you could please provide a copy of that.
5 That's on the Internet, the docketed --

6 MS. HOLMES: Actually I believe it
7 isn't.

8 HEARING OFFICER CELLI: It's not?

9 MS. HOLMES: I believe it's not. We'll
10 make sure that they leave today with a copy.

11 HEARING OFFICER CELLI: I apologize.
12 That would be great if staff could provide a copy
13 of the October 14 Edison letter. Responses will
14 be due on December 4 from both parties.

15 At this time since the matter has been
16 bifurcated, the hearing has been bifurcated
17 pending the identification of the emissions and
18 reductions credits as required by law, the
19 Committee expects the parties to confer prior to
20 setting a next Evidentiary Hearing date so that we
21 know whether there is a dispute. And hopefully
22 the parties can settle any disputes. But I will,
23 the Committee will need to know as soon as
24 possible that the ERCs are identified so that we
25 can provide adequate notice of the hearing at the

1 earliest possible opportunity.

2 With that I would ask Commissioner Boyd
3 to adjourn the hearing.

4 MR. CARROLL: May I ask a point of
5 clarification?

6 HEARING OFFICER CELLI: Please.

7 MR. CARROLL: Just so that I understand
8 since we now need to respond to these comments of
9 Edison, which sound like they cover a number of
10 areas. But would it be the intent of the
11 Committee that once those issues have been
12 addressed then the evidentiary record would be
13 closed with the exception of Air Quality?

14 HEARING OFFICER CELLI: No, the
15 evidentiary record is going to remain open
16 entirely. It's an open proceeding at this point.
17 It will be closed after we have taken the last of
18 the evidence. And I am doing that because we may
19 want to take in some additional evidence when we
20 have the hearing on the Air Quality. Issues may
21 come up having to do with Bio and things like that
22 as a result of these comments. And so I just felt
23 that it would be most efficient if we left it open
24 and kind of gave ourselves the opportunity to
25 clean up and tie any loose ends at that subsequent

1 Evidentiary Hearing. Applicant?

2 MR. CARROLL: Well, I guess our
3 understanding had been, and I recognize that the
4 comment letter from Southern California Edison
5 throws a bit of a wrench into things. But the
6 record on Air Quality could potentially stay open
7 for some time.

8 And our understanding had been, and
9 preference, is for the record to be closed in the
10 other remaining areas so that we are not
11 revisiting all of the topics that have now been
12 put to rest four months from now or five months
13 from now. Our request would be that once the
14 issues that Southern California Edison has raised
15 our resolved, that the record be closed with the
16 exception of Air Quality.

17 HEARING OFFICER CELLI: Staff?

18 MS. HOLMES: Staff doesn't have a
19 position on this issue.

20 HEARING OFFICER CELLI: Well, since we
21 have no intervenors really and there's just the
22 two parties. I just want to make sure that we
23 have everything in the record and that everything,
24 all of the holes are filled.

25 My inclination then would be to say that

1 we will give you until after December 4, at which
2 time we would close the record. And we would put
3 out a Notice, or an Order rather, that officially
4 closes the record after the December 4 date on all
5 issues with the exception of Air Quality if that
6 is acceptable to both parties.

7 That's applicant's motion. Staff, any
8 comment? Are there any topics that you feel that
9 we need to leave open?

10 MS. HOLMES: There are no topics that we
11 need to leave open. Staff does not have any
12 objection to your proposal.

13 I would point out that there was a
14 typographical error in the Final Staff Assessment,
15 which I will take the opportunity to correct at
16 this point if the record is going to be closed.
17 And that's in the Soil and Water Resources
18 section; there are two Appendix Cs. And the
19 second Appendix C, which is the September 17, 2008
20 letter from Desert Water Agency signed by David
21 Luker should in fact be Appendix D.

22 HEARING OFFICER CELLI: Any objection?

23 MR. CARROLL: No.

24 HEARING OFFICER CELLI: Okay, the
25 9/17/08 letter shall be Appendix D.

1 Any other matters?

2 MR. CARROLL: No, thank you.

3 HEARING OFFICER CELLI: Okay. At this
4 time, Commissioner Boyd.

5 PRESIDING MEMBER BOYD: Okay, I think I
6 concur with your approach to the record.

7 Is there anybody here who wanted to
8 speak that didn't get a chance to speak?

9 Hearing none this hearing will be
10 adjourned. Thank you all.

11 (Whereupon at 9:55 a.m., the
12 Evidentiary Hearing was
13 adjourned.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Evidentiary Hearing; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 4th day of November, 2008.

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